UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Alexandria Division

TRIANTAFYLLOS TAFAS,)
Plaintiff,)
v.) Civil Action No. 1:07cv846(L) (JCC/TRJ)
DAVID KAPPOS, et al.,)
Defendants.)) _)
CONS	SOLIDATED WITH
SMITHKLINE BEECHAM CORP., d/b/a GLAXOSMITHKLINE, et al.,)
Plaintiffs,)) Civil Action No. 1:07cv1008 (JCC/TRJ)
v.)
DAVID KAPPOS, et al.,)
Defendants.))

REPORT TO THE COURT

Defendants David Kappos, Director of the United States Patent and Trademark Office ("USPTO"), and the USPTO, wish to bring to the Court's attention a significant development related to the application for attorneys' fees and expenses that Plaintiff Triantafyllos Tafas filed in the United States Court of Appeals for the Federal Circuit pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. On March 23, 2010, the Federal Circuit summarily denied the application filed in that court. *See* Attachment 1. The motion for fees and expenses that accompanied Tafas's application in the Federal Circuit rested on the same legal grounds as the motion for fees and expenses under EAJA that he contemporaneously filed with this Court.

Compare Attachment 2, with E.D. Va. Dkt. No. 284; compare Attachment 3, with E.D. Va. Dkt. No. 285. The only difference between the filings is that Tafas's Federal Circuit motion asked for fees and expenses incurred at the appellate level, whereas the motion filed in this Court requests fees and expenses incurred at both the district court and appellate levels.

After denying Tafas's application for fees and expenses, the Federal Circuit also denied the consent motion Tafas filed seeking a remand of the matter to allow this Court to consider together the request for fees and expenses incurred at the district court and appellate levels. See Fed. Cir. Dkt. No. 259.

The Federal Circuit's denial of fees and expenses incurred in the appellate proceedings precludes this Court from awarding fees or expenses for work done at the appellate level. See, e.g., Barrera v. Principi, 18 Fed. Appx. 901, 904-05 (Fed. Cir. 2001). If – despite the Federal Circuit's denial of an essentially identical motion – Tafas chooses to proceed with the motion for fees and expenses filed in this Court for work done at the district court level, Defendants will file their opposition to that motion, limited to the questions of Tafas's eligibility for and entitlement to a fee award, on or before April 28, 2010. See E.D. Va. Dkt. No. 288.

Respectfully submitted,

NEIL H. MACBRIDE UNITED STATES ATTORNEY

By: /s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 7, 2010, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all parties, including the following counsel for Plaintiff Triantafyllos Tafas:

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I will also cause copies of the foregoing to be sent to the following non-ECF users by first-class mail (where an address has been provided to the Court) or electronic mail (where it has not been).

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